

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

MARION CHOJNOWSKI,

Plaintiff,

vs.

No. CIV-05-00787 JB/RHS

BENIPAL TRUCKING, HARVINDER SINGH,
PAUL MANAN d/b/a MANAN TRUCKING;
SMITH & SON TIRE CO.

Defendant.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on Defendants Benipal Trucking and Harvinder Singh's Motion to Extend Deadline for Filing Dispositive Motions, filed March 1, 2007 (Doc. 82)("Motion to Extend"). The primary issue is whether the Court should extend the deadline to file dispositive motions from March 1, 2007, to March 15, 2007. Because no party has filed a written opposition to the motion, because Benipal and Singh have shown good cause for the extension, and because the Court does not see any prejudice to any party from the extension, the Court will grant the motion and extend the deadline.

FACTUAL BACKGROUND

Plaintiff Marian Chojnowski represents that, on or about April 24, 2005, she was a passenger in a tractor-trailer heading westbound on Interstate-40 near the 325 mile post in Quay County, New Mexico. See Complaint for Personal Injuries ¶ 8, at 2, filed July 19, 2005 (Doc. 1). Chojnowski states that Singh was driving another tractor-trailer heading eastbound at the same location, and that Singh's trailer lost a set of wheels off the trailer's driver's side rear axle. See id. ¶ 7, at 2. She asserts

that the wheel from Singh's tractor-trailer crossed the highway's median and struck Chojnowski's vehicle, causing the driver to lose control of the tractor-trailer. See id. ¶ 8, at 2. Chojnowski alleges that, as a result of the accident, she sustained severe personal injuries. See id. ¶ 15, at 3.

PROCEDURAL BACKGROUND

On February 12, 2007, the Court entered an order extending the discovery deadline in this case until March 10, 2007. See Order Extending Discovery Deadline and Discovery Motions Deadline, filed February 12, 2007 (Doc. 81). The deadline for all pre-trial motions is March 1, 2007. See Memorandum Opinion and Order at 3, filed December 12, 2006 (Doc. 68). Benipal and Singh state that the deposition of the police officer that reported the accident is set for March 7, 2007. See Motion to Extend ¶ 3, at 1.

Benipal and Singh request that the Court enter an order extending the deadline for dispositive motions until March 15, 2007. See id. at 1. Defendants Manan Trucking ("Manan") and Smith & Son Tire Co. ("Smith & Son") do not oppose this motion. See id. ¶ 5, at 1. Counsel for Benipal and Singh represents that, before filing this motion, he conferred with Chojnowski's counsel, both by telefacsimile correspondence and by teleconference, but Chojnowski's counsel did not convey his position on the motion. See id.

As late as March 14, 2007, counsel for Benipal and Singh advised the Court's Courtroom Deputy Clerk that he still did not know Chojnowski's position. Chojnowski has not filed a written opposition to this motion.

ANALYSIS

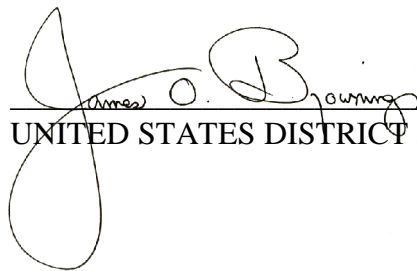
Benipal and Singh filed their Motion to Extend on March 1, 2007. Manan and Smith & Son do not oppose the motion. Chojnowski has not filed a written response and the time for doing so has

passed. Pursuant to Local Civil Rule 7.6(a), “[a] response must be served within fourteen (14) calendar days after service of the motion.” D.N.M.L.R.-Civ.7.6(a). In addition, Local Civil Rule 7.1(b) provides that “[t]he failure of a party to file and serve a response in opposition to a motion within the time prescribed for doing so constitutes consent to grant the motion.” D.N.M. L.R.-Civ. 7.1(b).

Nevertheless, despite Chojnowski’s consent under the rule, the Court has independently reviewed the contents of the motion and the circumstances of the case to determine whether it should grant the extension. Because the Court believes that granting the extension would be consistent with its earlier rulings in this case, and that an extension will not unduly delay the resolution of the case or prejudice any party, the Court will grant the motion.

Benipal and Singh represent that the information from the deposition of the police officer is necessary for determining whether a motion for summary judgment is appropriate in this case and will likely be necessary for that motion. See Motion to Extend ¶ 4, at 1. The Court usually sets the deadline for filing dispositive motions after the discovery deadline, but because the discovery deadline was extended, the discovery deadline falls after the deadline for filing dispositive motions. There is nothing about this case that indicates that the Court should deviate from the usual way that it treats the two deadlines. The Court believes that granting the parties five days to file dispositive motions after the discovery deadline is reasonable and will therefore grant the extension Benipal and Singh request.

IT IS ORDERED that the Motion to Extend Deadline for Filing Dispositive Motions is granted.



UNITED STATES DISTRICT JUDGE

Counsel:

Turner W. Branch
Richard A. Sandoval
Branch Law Firm
Albuquerque, New Mexico

Attorneys for the Plaintiff

R. Nelson Franse
Seth L. Sparks
Wade L. Jackson
Rodey, Dickason, Sloan, Akin
& Robb, P.A.
Albuquerque, New Mexico

*Attorneys for Defendants Benipal Trucking
and Harvinder Singh*

Nathan H. Mann
Nancy J. Franchini
Gallagher, Casados & Mann, P.C.
Albuquerque, New Mexico

*Attorneys for Defendant Paul Manan d/b/a
Manan Trucking*

P. Scott Eaton
James D. McAlister
Eaton Law Office, P.C.
Albuquerque, New Mexico

Attorneys for Defendant Smith & Son's Tire Co.